

OPENING STATEMENT
THE HONORABLE JAMES L. OBERSTAR
FULL COMMITTEE HEARING ON
THE DEPARTMENT OF TRANSPORTATION'S DISADVANTAGED BUSINESS ENTERPRISES
PROGRAM

MARCH 26, 2009

Today, the Committee will evaluate the Department of Transportation's ("DOT") Disadvantaged Enterprises ("DBE") Program. The DBE program was established through a series of legislative initiatives to remedy past and current discrimination against minority and women-owned businesses to ensure that they are provided equal opportunity to compete for DOT-assisted highways, transit and airport contracts.

Major infrastructure investments such as those in aviation and surface provide substantial sources of revenue to local construction and engineering contractors. For too long, disadvantaged and minority-owned businesses were unable to secure portions of these large contracts due to high barriers to entry in the sector, and were unable to compete with larger firms bidding to participate in these projects. That is where the need for the DBE program came in.

In 1983, Congress established a national 10 percent aspirational participation goal for firms certified as DBEs with respect to surface transportation programs, airport federally-assisted contracting (i.e., procurement, construction, or professional services contracts), and airport concessions.

DOT regulations require recipients of federal financial assistance --state and local transportation agencies and airport operators -- that anticipate awarding prime contracts of more than \$250,000 to establish an annual aspirational DBE participation goal that reflects what DBE participation would be in the absence of discrimination. A recipient's goal is aspirational only; quotas and set-asides are generally not permitted.

Importantly, recipients are required to use race-neutral means to meet as much of their overall goal as possible, such as providing assistance in obtaining bonding or financing, unbundling large contracts to make them more accessible to small businesses, or conducting informational programs on contracting procedures and specific contract opportunities.

However, if a recipient is unable to meet its overall DBE participation goal through race-neutral means, then the recipient must establish contract goals (which are deemed race conscious) for DBE participation. This means that the recipient has determined that without the use of race-conscious measures, minority and women business owners would not have an adequate opportunity to participate in DOT-assisted contracts.

The DBE program has faced a number of legal and legislative challenges, and I am proud to say that the program has been able to withstand those challenges. In 1995, the U.S. Supreme Court ruled, in *Adarand v. Peña* that race-conscious programs were

subject to a “strict scrutiny” standard of legal review. The ruling required that all affirmative action programs be "narrowly tailored to serve a compelling governmental interest," that of addressing discrimination. In response to the Supreme Court's decision in *Adarand*, the DOT issued new regulations to ensure non-discrimination in the award and administration of DOT-assisted contracts, and to assist firms owned and controlled by minorities, women, and other socially and economically disadvantaged persons have the opportunity to grow and become self-sufficient. Since *Adarand*, every federal court that has reviewed the DOT's DBE program has found it to be constitutional.

The Committee has also received volumes of evidence, both empirical and anecdotal, about the discrimination that continues to impact minority and women business owners across this nation.

This data demonstrates that it is difficult for small and disadvantaged businesses to compete—discrimination impacts minority and women owned businesses at many points in the contracting process, including obtaining credit, bonding, and insurance. By expanding access to federal contracts, minority owned small businesses are provided the opportunity and the aid needed to overcome the large barriers to entry they face in entering the marketplace.

Over the past two decades, the Committee on Transportation and Infrastructure has supported the continuation of the DBE program in the reauthorization of its transportation programs and we must work to continue and strengthen these programs as we reauthorize both the aviation and surface transportation programs this session.

I thank each of the witnesses for taking the time to be with us today and I look forward to your testimony.

View video of the hearing at: http://transportation.house.gov.

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